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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,628	03/01/2004	Donald A. Stevens	4417-040172	1336

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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

03/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/790,628

Applicant(s)

STEVENS, DONALD A.

Examiner

Jessica Laux

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 12-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Acknowledgement is made of applicant's amendment filed 12/16/2007.

Accordingly the application has been amended.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites a connector segment located furthest from the back side of the sheet and connecting the first and second sides of the rib and then later recites that the first and second side converge. It is unclear from the claim whether the converging sides comprise the connector segment or whether the connector segment is a separate element from the converging sides. Appropriate clarification is required.

Claim 11 recites the limitation "at the place of maximum divergence". There is insufficient antecedent basis for this limitation in the claim. Accordingly the claim is indefinite and will be examined as best understood.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by
Clark (1309241).**

Regarding claim 1: Clark discloses a lath for use with a frame member for a structural panel comprising:

a) a generally planar sheet having a front side and a back side (as seen in figure 1),

b) a plurality of ribs (1, 2, 3) formed within the sheet

i) wherein the ribs protrude from the back side of the sheet (as seen in figure 1),

ii) wherein each rib has a profile with a first side (6, 9, 11) , a second side , 7, 10, 12) and a connector segment (13) therebetween, wherein the connector segment is located furthestmost from the back side of the sheet;

iii) wherein each of the first side and the second side diverge from one another as they extend away from the back side and then converge (where they diverge at 11, 12 and converge at 13), and

iv) wherein the first side and the second side are spaced apart from one another from the back side to the connector segment (as seen in the figures);
and

c) a plurality of segments (separated by 16 as seen in figures 1-2) with slats (14, 15) extending through the sheet for adapting the sheet to receive and retain thereupon a structural coating.

Regarding claims 2-3: The lath in accordance with claim 1, wherein the sheet is constructed from a thin pliable material, metal, such that the ribs are resilient and the ribs may, be compressed to reduce the maximum height (page 2, lines 1-9).

Regarding claim 4: The lath in accordance with claim 1, wherein the segments are adjacent to one another and wherein the slats within adjacent segments are oriented differently to securely engage any structural coating that may be applied to the sheet (as seen in figures 1-2).

Regarding claim 5: The lath in accordance with claim 4, wherein the slats within a segment are parallel to one another (as seen in figure 2).

Regarding claim 6: The lath in accordance with claim 5, wherein the sheet has a longitudinal axis, each slat is along a line to define a slat vertical angle with the longitudinal axis, and wherein the slat vertical angle formed by the slats in one segment are equal and opposite to the slat vertical angle formed by the slats in an adjacent segment (as seen in figure 2).

Regarding claim 7: The lath in accordance with claim 1, wherein, when viewed in section, each segment of slats forms a slat planar angle with the longitudinal axis and wherein the planar slat angle of the slats in one segment is equal to and opposite the slat planar angle formed by the slats in an adjacent segment (as seen in figures 1-2).

Regarding claim 8: The lath in accordance with claim 1, wherein a plurality of divots (at 16) are formed within the front side of the sheet to provide protrusions (16) from the back side of the sheet, such that the sheet may be spaced from any flat surface upon which it may be applied.

Regarding claim 9: The lath in accordance with claim 1, wherein each rib has a plurality of holes (as seen in figures 6, 7, 9) extending therethrough to provide pressure relief to any structural coating that may be applied to the sheet.

Regarding claim 10: Clark discloses a lath for use with a frame member for a structural panel comprising:

- a) a generally planar sheet having a front side and a back side (see figure 1),
- b) a plurality of ribs (1, 2, 3) formed within the sheet
 - i) wherein the ribs protrude from the back side of the sheet (as seen in figure 1),
 - ii) wherein each rib has a profile shaped to resiliently snap into and be positively retained within an opening of the frame member (where the profile of the rib can be snapped in with elements 6, 7, 9, 10, 11, 12, 13), and
- c) a plurality of slats (14, 15) extending through the sheet for adapting the sheet to receive and retain thereupon a structural coating.

Regarding claim 11 (as best understood): Clark discloses a lath for use with a frame member for a structural panel comprising:

- a) a generally planar sheet having a front side and a back side (as seen in figure 1),
- b) a plurality of ribs (1, 2, 3) formed within the sheet
 - i) wherein the ribs protrude from the back side of the sheet (as seen in figure 1),
 - ii) wherein each rib has a profile with a first side and a second side in the shape of a barb (comprised of elements 6, 7, 9, 10, 11, 12, 13) adapted to snap into an opening of the frame member, and

iii) wherein the maximum height of a rib between the first side and the second side occurs at the place of maximum divergence, and
c) a plurality of slats (14, 15) extending through the sheet for adapting the sheet to receive and retain thereupon a structural coating.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/
Primary Examiner, Art Unit 3633

/J. L./
Examiner, Art Unit 3635
02/29/2008